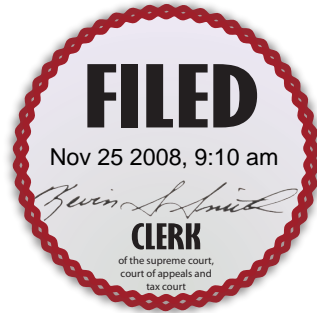


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THEODORE SUEL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 02A03-0805-CR-241
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0705-FB-76

November 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Theodore Suel challenges his conviction and sentence for Dealing in Cocaine, a Class B felony.¹ Suel contends that the evidence was insufficient to support his conviction and that his sentence was inappropriate in light of the nature of his offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On April 3, 2007, Fort Wayne Police Detective John Greenlee was undercover when he was flagged down by Terry McCaudis as he drove through a high drug crime area in the 2500 block of Warsaw Street. McCaudis asked what Detective Greenlee “was looking for” and Detective Greenlee replied “‘20,’ meaning \$20.00 worth of crack cocaine.” Tr. pp. 157-58. McCaudis took Detective Greenlee’s money and approached Suel, who was sitting on a porch. McCaudis and Suel engaged in a conversation before McCaudis returned to Detective Greenlee’s vehicle with the requested quantity of crack cocaine.

On April 12, 2007, Detective Greenlee again made contact with McCaudis while driving through the 2500 block of Warsaw Street. Detective Greenlee gave McCaudis \$25.00 for cocaine. McCaudis walked out of Detective Greenlee’s view, and moments later, Suel approached Detective Greenlee’s vehicle, asked for a ride, and stated “I got what you need. I got the stuff. I got it. Just take me where I need to go and I can give it to you when we get there.” Tr. p. 160. When Detective Greenlee arrived at the location indicated by Suel, Suel handed Detective Greenlee the crack cocaine. Suel told Detective Greenlee that “it’s how things have to go since [he] was new. [Suel] didn’t recognize [Greenlee’s] face, but

¹ Ind. Code § 35-48-4-1 (2006).

since [he] had been there and done a drug transaction with [Suel] and a previous transactions [sic] that things would be much easier now that he recognized [Detective Greenlee's] face and knew who [he] was." Tr. p. 150. Suel indicated that Detective Greenlee could come back anytime and that Suel would be willing to deal with him.

On May 17, 2007, the State charged Suel with Class B felony dealing in cocaine. At the conclusion of Suel's April 1, 2008 trial, a jury found Suel guilty as charged. The trial court sentenced Suel to fifteen years of incarceration.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Suel challenges the sufficiency of the evidence to support his conviction for dealing in cocaine. Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled.

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted). In order to convict Suel of dealing in cocaine, the State had to prove that Suel knowingly or intentionally delivered cocaine in a pure or adulterated state. Ind. Code § 35-48-4-1.

Here, the evidence most favorable to the verdict established that Suel handed Detective Greenlee 0.2 grams of crack cocaine. Suel's arguments on appeal amount to an

invitation to reweigh the evidence and assess witness credibility, an invitation which we decline. We conclude that the evidence was sufficient to support Suel's conviction for dealing in cocaine.

II. Appropriateness of Sentence

Suel also contends that his fifteen-year sentence is inappropriate in light of the nature of his offense. Indiana Appellate Rule 7(B) provides that appellate courts “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The burden lies with the defendant to persuade us that his or her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Again, here, Suel was convicted of Class B felony dealing in cocaine. Indiana Code section 35-50-2-5 (2007) provides that “a person who commits a Class B felony shall be imprisoned for a fixed term between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” The trial court sentenced Suel to an enhanced fifteen-year sentence.

Suel claims that an enhanced sentence was inappropriate because the money involved in the transaction was only \$25.00 and the quantity involved only 0.2 grams. The State concedes that the nature of Suel’s offense, selling a relatively small amount of crack cocaine directly to Detective Greenlee, is not particularly egregious, but argues that Suel’s character justified his aggravated fifteen-year sentence. We agree.

Suel has an extensive criminal history. Suel’s criminal history includes eight previous

felony convictions, consisting of four convictions for possession of paraphernalia, two convictions for carrying a handgun without a license, and two convictions for escape. Moreover, Suel's criminal history includes twenty-nine previous misdemeanor convictions, consisting of six convictions for battery, five convictions for false informing, four convictions for resisting law enforcement, three convictions for public intoxication, two convictions for criminal trespass, two convictions for driving/operating while intoxicated, two convictions for possession of paraphernalia, one conviction for carrying a handgun without a license, one conviction for criminal recklessness, one conviction for disorderly conduct, one conviction for refusal to identify, and one conviction for "never receive license." Pre-Sentence Investigation Report p. 4. Additionally, Suel's criminal history includes three parole violations and one probation violation.

We agree with the trial court that in light of Suel's extensive criminal history, it is clear from the record that prior attempts at rehabilitation have been unsuccessful. In fact, we note that since the year 1978, there have been only approximately five years in which Suel has not been either charged with some offense or imprisoned as a result of a criminal conviction. Therefore, in light of Suel's extensive criminal history, which includes both drug-related and non-drug-related felony and misdemeanor offenses, we conclude that Suel's enhanced fifteen-year sentence is appropriate in light of his character.

The judgment of the trial court is affirmed.

RILEY, J. and BAILEY, J., concur.